



## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **45 CFR Parts 60 and 61**

**RIN 0906-AA87**

#### **National Practitioner Data Bank**

**AGENCY:** Health Resources and Services Administration (HRSA), HHS

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects non-substantive technical errors in the final rule entitled "National Practitioner Data Bank" which appeared in the April 5, 2013, issue of the Federal Register. The corrections improve the precision of the text, which is intended to enhance the accuracy with which users comply with these regulatory requirements.

**DATES:** This correction is effective on May 6, 2013.

#### **FOR FURTHER INFORMATION CONTACT:**

Director, Division of Practitioner Data Banks, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, 5600 Fishers Lane, Room 8-103, Rockville, MD 20857; telephone number: (301) 443-2300.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

In FR Doc. No. 2013-07521 of April 5, 2013 (78 FR 20473), the final rule entitled "National Practitioner Data Bank", there were a number of non-substantive technical errors as a result of using a version of text without final edits. The errors are identified in the Summary of Errors section and corrected in the Correction of Errors section. The provisions in this correction document are effective as if they had been included in the document published April 5, 2013.

##### **II. Summary of Errors**

###### **A. Summary of Errors in the Preamble**

On pages 20473, 20474, 20475, 20476, 20477, and 20478, we made several grammatical errors. Also, we made inadvertent reference to “government health care program” instead of the more accurate reference to “Federal health care program,” “state health care program,” or “Federal or state health care program.”

On page 20479, we inadvertently referred to “Social Security Number” as a word instead of as a phrase. We also made inadvertent reference to “government health care program” instead of “Federal or state” health care program.

On page 20480, we made inadvertent reference to “government health care program” instead of “Federal or state” health care program.

On pages 20481, 20482, and 20483, we made inadvertent reference to “government health care program” instead of “state health care program.” Also, we made two minor punctuation errors.

## **B. Summary of Errors in the Regulations Text**

On page 20484, in the list of sections, we made inadvertent reference in the title of § 60.15 to government health care programs instead of Federal or state health care programs. Also, in § 60.1, we made a minor punctuation error.

On page 20485, in § 60.2, we made two grammatical errors. Also, in § 60.3, under the definition of exclusion, we made inadvertent reference to government health-related program instead of Federal or state health-related program.

On page 20486, in the definition of health plan and in the definition of negative action or finding, we made a minor punctuation error.

On page 20487, in the definition of state law or fraud enforcement agency, we made an inadvertent reference to government health care program instead of state health care program. Also, in the definition of voluntary surrender of license or certification and in § 60.5 (g), we made an inadvertent reference to government health care programs instead of Federal or state health care program.

On page 20488, in § 60.6, we made two minor punctuation errors. In §60.7, we made one minor grammatical error.

On page 20492, in § 60.13 (c)(2)(ii) and (c)(3)(vi), we used the term “to include” instead of “including.” We made the correction to clarify that the list following the term is not inclusive. Also, in the title of § 60.15 and in the first paragraph under the title, we made an inadvertent reference to government health care programs instead of Federal or state health care programs.

On page 20493, in § 60.15 (c)(2)(ii) and (c)(3)(vi), we used the term “to include” instead of “including.” We made the correction to clarify that the list following the term is not inclusive. Also, in § 60.17 (a)(1), we made two minor punctuation errors. Further, in § 60.17 (a)(2), in the phrase “every 2 years concerning any health care practitioner” we changed the word “concerning” to “for” to improve clarity of the requirement.

On page 20494, in § 60.18 (a)(2)(i), we made an inadvertent reference to government health care programs instead of Federal health care programs. In §60.18 (a)(2)(iii), we made an inadvertent reference to government health care programs instead of state health care programs. Further, in § 60.18 (a)(2)(vi) and (a)(2)(vii), when listing the sections of the rule that contain information that can be disclosed to certain entities, we erroneously omitted reference to § 60.10. Also, in § 60.18 (b) we made a minor grammatical error.

### **III. Waiver of Proposed Rulemaking and Delay in Effective Date**

HHS ordinarily publishes a notice of proposed rulemaking in the Federal Register to provide a period for public comment before the provisions of a rule take effect, in accordance with Section 553(b) of the Administrative Procedure Act (APA)(5 U.S.C. 553(b)). However, this notice and comment procedure can be waived if it is found, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules

after the date of their publication in the Federal Register. This 30-day delay in effective date can be waived, however, if an agency finds there is good cause to do so, and the agency incorporates a statement of the findings and its reasons in the rule issued.

In our view, this correcting document does not constitute a rule that would be subject to the APA notice and comment or delayed effective date requirements. It corrects non-substantive technical errors in the preamble and regulations text of the April 5, 2013, final rule and does not make substantive changes to the policies that were adopted. Further, the corrections improve the precision of the text, which is intended to enhance the accuracy with which users comply with these regulatory requirements. As a result, this correcting document is intended to ensure that the final rule accurately reflects the policies adopted in, and legislative requirements set forth in that rule.

In addition, even if this were a rule to which the notice and comment and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule or delaying the effective date would be contrary to the public interest. Furthermore, such procedures would be unnecessary, as we are not altering the policies that were already subject to comment and finalized in our final rule. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements.

#### **IV. Correction of Errors**

In FR Doc. No. 2013-07521 published April 5, 2013 (78 FR 20473), make the following corrections:

##### **A. Corrections of Errors in the Preamble**

1. On page 20473:

- a. Column 1, Summary, line 6: “National Practitioner Data Bank” is corrected to read: “National Practitioner Data Bank (NPDB)”.
- b. Column 1, Summary, lines 13 and 14: “Healthcare Integrity and Protection Data Bank” is corrected to read: “Healthcare Integrity and Protection Data Bank (HIPDB)”.
- c. Column 1, Summary, lines 19 and 20: “Healthcare Integrity and Protection Data Bank (HIPDB)” is corrected to read: “HIPDB”.
- d. Column 1, Summary, lines 22 and 23: “National Practitioner Data Bank (NPDB)” is corrected to read: “NPDB”.
- e. Column 1, Summary, lines 26 and 27 and Column 2, lines 1, 2, and 3: “Healthcare Integrity and Protection Data Bank to the National Practitioner Data Bank, and, once completed, to cease operations of the Healthcare Integrity and Protection Data Bank.” is corrected to read: “HIPDB to the NPDB, and, once completed, to cease operations of the HIPDB.”
- f. Column 2, Background, (1) The Health Care Quality Improvement Act of 1986 (42 U.S.C. 11101 et seq.), lines 23, 24 and 25: “services, state medical or dental boards and other health care practitioner state boards.” is corrected to read: “services, state medical or dental boards, and other health care practitioner state boards.”

- g. Column 3, Background, (2) Section 1921 of the Social Security Act (42 U.S.C. 1396r-2)(Prior to the passage of the Affordable Care Act), paragraph 2, lines 8 and 9: “health care practitioner state boards), other state licensing authorities,” is corrected to read: “health care practitioner state boards); other state licensing authorities;”
  - h. Column 3, Background, (2) Section 1921 of the Social Security Act (42 U.S.C. 1396r-2)(Prior to the passage of the Affordable Care Act), paragraph 2, lines 10 and 11: “agencies administering government health care programs” is corrected to read: “agencies administering Federal health care programs”.
  - i. Column 3, Background, (2) Section 1921 of the Social Security Act (42 U.S.C. 1396r-2)(Prior to the passage of the Affordable Care Act), paragraph 2, lines 13 through 18: “under contract), state agencies administering or supervising the administration of government health care programs, state Medicaid fraud control units, certain law enforcement agencies,” is corrected to read: “under contract); state agencies administering or supervising the administration of state health care programs; state Medicaid fraud control units; certain law enforcement agencies;”
- 2. On page 20474, Column 1, line 13: “government health care programs” is corrected to read: “Federal or state health care programs”.
  - 3. On page 20475:
    - a. Column 2, lines 19 and 20: “participation in a government health care program” is corrected to read: “participation in a state health care program”.
    - b. Column 2, lines 27 and 28: “administering government health care programs” is corrected to read: “administering Federal health care programs”.

- c. Column 2, lines 36 and 37: “administration of government health care programs” is corrected to read: “administration of state health care programs”.
  - d. Column 3, first paragraph under C. Section 1128E, as Amended by Section 6403, lines 18 and 19: “exclusions from government health care programs” is corrected to read: “exclusions from Federal health care programs”.
  - e. Column 3, third paragraph, line 3: “data bank requirements” is corrected to read: “Data Bank requirements”.
4. On page 20476:
- a. Table 1, column 1, under heading What Information is Reported?, Section 1128E (HIPDB), 3<sup>rd</sup> bullet: “Exclusions from government health care programs” is corrected to read: “Exclusions from Federal or state health care programs”.
  - b. Table 1, column 2, under heading Reporting/Querying Requirements after Passage of Section 6403, 3<sup>rd</sup> bullet: “State authorities that license or certify practitioners, entities, providers, suppliers” is corrected to read: “State authorities that license or certify practitioners, entities, providers, and suppliers”.
  - c. Table 1, column 2, under heading What Information is Reported?, Section 1921 (NPDB), 4<sup>th</sup> bullet: “Exclusions from government health care programs” is corrected to read: “Exclusions from state health care programs”.
  - d. Table 1, column 2, under heading What Information is Reported?, Section 1128E (NPDB), 4<sup>th</sup> bullet: “Exclusions from government health care programs” is corrected to read: “Exclusions from Federal health care programs”.

5. On page 20477:

- a. Table 1, column 1, under heading Statutory Requirements before Passage of Section 6403, Section 1921 (NPDB), 5<sup>th</sup> bullet: “Agencies administering government health care programs” is corrected to read: “Agencies administering Federal health care programs”.
- b. Table 1, column 1, under heading Statutory Requirements before Passage of Section 6403, Section 1921 (NPDB), 6<sup>th</sup> bullet: “State agencies administering government health care programs” is corrected to read: “State agencies administering state health care programs”.
- c. Table 1, column 2, under heading Reporting/Querying Requirements after Passage of Section 6403, Section 1921 and Section 1128E (NPDB), 5<sup>th</sup> bullet: “Agencies administering (including those providing payment for services) government health care programs and their contractors” is corrected to read: “Agencies administering (including those providing payment for services) Federal health care programs and their contractors”.
- d. Table 1, column 2, under heading Reporting/Querying Requirements after Passage of Section 6403, Section 1921 and Section 1128E (NPDB), 6<sup>th</sup> bullet: “State agencies administering government health care programs” is corrected to read: “State agencies administering state health care programs”.

6. On page 20478:

- a. Column 1, F. Sanction Authority, line 21 and 22: “exclusions from government health care programs” is corrected to read: “exclusions from state health care programs”.
- b. Column 3, lines 2 through 10: ““board of medical examiners, or board,” “health care entity,” “health care practitioner, licensed health care practitioner, licensed practitioner, or practitioner,” “hospital,” “negative



action or finding,” “peer review organization,” “physician,” “private accreditation entity;”” is corrected to read: “board of medical examiners, or board;” “health care entity;” “health care practitioner, licensed health care practitioner, licensed practitioner, or practitioner;” “hospital;” “negative action or finding;” “peer review organization,” “physician;” “private accreditation entity;””

7. On page 20479:

- a. Column 2, line 4: “word Social Security Number.” is corrected to read: “phrase “Social Security Number.””
- b. Column 2, heading § 60.9 Reporting Licensure and Certification Actions Taken by States, lines 27 and 28: “participate in a government health care program.” is corrected to read: “participate in a Federal or state health care program.”
- c. Column 3, line 15: “word Social Security Number.” Is corrected to read: “phrase “Social Security Number.””

8. On page 20480:

- a. Column 2, heading § 60.15 “Reporting Exclusions From Participation in Government Health Care Programs” is corrected to read: “Reporting Exclusions from Participation in Federal or State Health Care Programs”.
- b. Column 2, heading § 60.15 Reporting Exclusions From Participation in Government Health Care Programs, lines 9 and 10: “participating in government health care programs” is corrected to read: “participating in Federal or state health care programs”.

9. On page 20481:

- a. Column 2, heading Definitions (§ 60.3), 1. Health Care Entity, Health Care Provider, and Health Care Supplier, 2<sup>nd</sup> paragraph, line 11: “supplier and entity are well defined.” is corrected to read: “supplier, and entity are well defined.”
- b. Column 3, under Response heading, line 14: “probation, reprimand or censure” is corrected to read: “probation, reprimand, or censure”.

10. On page 20482:

- a. Column 2, heading 6. State Law or Fraud Enforcement Agency, first paragraph, lines 5 and 6: “agencies administering a government health care program.” is corrected to read: “agencies administering a state health care program.”
- b. Column 2, heading 6. State Law or Fraud Enforcement Agency, second paragraph, lines 5 and 6: “agencies administering a government health care program” is corrected to read: “agencies administering a state health care program”.

11. On page 20483

- a. Column 1, heading Confidentiality of National Practitioner Data Bank Information (§60.20), first paragraph, line 18: ““superfluous.”” is corrected to read: ““superfluous.””

**B. Corrections of Errors in the Regulations Text**

- 1. On page 20484, Column 2, in the table of contents, the heading for § 60.6 is corrected to read: “Reporting errors, omissions, revisions, or whether an action is on appeal.”
- 2. On page 20484, Column 3, in the table of contents, the heading for § 60.15 is corrected to read: “Reporting exclusions from participation in Federal or state health care programs.”

§ 60.1 [Corrected]

3. On page 20484, Column 3, in § 60.1, at lines 11 and 12, the phrase “dentists and other health care practitioners.” is corrected to read: “dentists, and other health care practitioners.”

§ 60.2 [Corrected]

4. On page 20485, Column 1, in § 60.2, at lines 3, 4, and 5, the phrase “hospitals, health care entities, Boards of Medical Examiners, professional societies” is corrected to read: “hospitals, health care entities, Boards of Medical Examiners, and professional societies”.
5. On page 20485, Column 1, in § 60.2, at lines 16, 17, and 18, the phrase “medical malpractice actions or claims; Federal Government agencies” is corrected to read: “medical malpractice actions or claims; and Federal government agencies”.

§ 60.3 [Corrected]

6. On page 20485, Column 2, in § 60.3, at lines 25 through 32, the definition “*Exclusion* means a temporary or permanent debarment of an individual or entity from participation in any government health-related program, in accordance with which items or services furnished by such person or entity will not be reimbursed under any government health-related program.” is corrected to read: “*Exclusion* means a temporary or permanent debarment of an individual or entity from participation in any Federal or state health-related program, in accordance with which items or services furnished by such person or entity will not be reimbursed under any Federal or state health-related program.”
7. On page 20486, Column 1, in § 60.3, in paragraph (5) of the definition of *Health plan*, at lines 1 and 2, the phrase “An insurance company, insurance service or insurance organization” is corrected to read: “An insurance company, insurance service, or insurance organization”.

8. On page 20486, Column 2, under the definition of *Negative action or finding*, paragraph (3)(i), the phrase “Connected to the delivery of health care services, or” is corrected to read: “Connected to the delivery of health care services; or”.
9. On page 20487, Column 2, under the definition of *State law or fraud enforcement agency*, paragraph (3), at lines 4 and 5, the phrase “administration of a government health care program” is corrected to read: “administration of a state health care program”.
10. On page 20487, Column 3, at lines 5 and 6, the phrase “participation in government health care programs” is corrected to read: “participation in Federal or state health care programs”.

§ 60.5 [Corrected]

11. On page 20487, Column 3, in § 60.5(g), the phrase “Exclusions from government health care programs” is corrected to read: “Exclusions from Federal or state health care programs”.

§ 60.6 [Corrected]

12. On page 20488, Column 1, in § 60.6(a) at line 8, the phrase “NPDB and in the case of reports made” is corrected to read: “NPDB and, in the case of reports made”.
13. On page 20488, Column 1, in § 60.6(d)(2), at line 14, the phrase “the factual nature of the statement.) or” is corrected to read: “the factual nature of the statement.); or”.

§ 60.7 [Corrected]

14. On page 20488, Column 2, in § 60.7(b)(1)(viii), the phrase “Drug Enforcement Administration registration number, if known,” is corrected to read: “Drug Enforcement Administration registration number, if known, and”.

§ 60.13 [Corrected]

15. On page 20492, Column 1, in § 60.13(c)(2)(ii), at line 2, the phrase “Federal or state agencies, to include” is corrected to read: “Federal or state agencies, including”.

16. On page 20492, Column 2, in § 60.13(c)(3)(vi), at line 2, the phrase “Federal or state agencies, to include” is corrected to read: “Federal or state agencies, including”.

§ 60.15 [Corrected]

17. On page 20492, Column 3, in § 60.15, the heading “Reporting exclusions from participation in government health care programs” is corrected to read: “Reporting exclusions from participation in Federal or state health care programs”.
18. On page 20492, Column 3, in § 60.15(a), at line 6, the phrase “government health care programs” is corrected to read: “Federal or state health care programs”.
19. On page 20493, Column 1, in § 60.15(c)(2)(ii), at line 2, the phrase “Federal or state agencies, to include” is corrected to read: “Federal or state agencies, including”.
20. On page 20493, Column 2, in § 60.15(c)(3)(vi), at line 2, the phrase: “Federal or state agencies, to include” is corrected to read: “Federal or state agencies, including”.

§ 60.17 [Corrected]

21. On page 20493, Column 3, in § 60.17(a)(1), the phrase “At the time a health care practitioner, applies for a position on its medical staff (courtesy or otherwise), or for clinical privileges at the hospital;” is corrected to read: “At the time a health care practitioner applies for a position on its medical staff (courtesy or otherwise) or for clinical privileges at the hospital;”
22. On page 20493, Column 3, in § 60.17(a)(2), at lines 1 and 2, the phrase “Every 2 years concerning any health care practitioner,” is corrected to read: “Every 2 years for any health care practitioner”.

§ 60.18 [Corrected]

23. On page 20494, Column 2, in § 60.18(a)(2)(i), at line 3, the phrase “government health care programs” is corrected to read: “Federal health care programs”.

24. On page 20494, Column 2, in § 60.18(a)(2)(iii), at line 3, the phrase “government health care programs” is corrected to read: “state health care programs”.
25. On page 20494, Column 2, in § 60.18(a)(2)(vi), at line 9, the phrase “pursuant to §§ 60.9 and 60.11” is corrected to read: “pursuant to §§ 60.9, 60.10, and 60.11”.
26. On page 20494, Column 2, in § 60.18(a)(2)(vii), at line 13, the phrase “§§ 60.9 and 60.11” is corrected to read: “§§ 60.9, 60.10, and 60.11”.
27. On page 20494, Column 3, in § 60.18(b), the phrase “National Practitioner Data Bank” in the paragraph (b) heading is corrected to read: “NPDB”.

Dated: \_April 29, 2013\_\_\_\_\_

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**Jennifer M. Cannistra,**

Executive Secretary to the Department.

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